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viewed unless Abused or unless Ruling Was Based on Irregular and Inadmissible Evidence.—In prosecution for violation of the prohibition act, refusal to charge jury not to impose jail sentence under Acts 1918, c. 388, § 5, requiring court to so charge, if it shall appear that the violation of the statute was not intentional, will not be reviewed on appeal except in case of clear abuse of discretion or where based upon irregular and inadmissible evidence.

8. Intoxicating Liquors (§ 242½*)—**New, vol. 13A Key-No. Series—Requiring Reputable Physician to Execute Bond against Violation of Prohibition Act on Conviction of Transportation of Liquor Held Improper.**—In prosecution for transportation of liquor, in which defendant was a physician of good reputation and of high standing, and claimed the violation of the statute to have been unintentional, action of court in requiring defendant to execute a bond conditioned that he would not violate the prohibition act for the term of one year under Acts 1918, c. 388, § 43, held improper in absence of evidence that defendant was likely to again violate the act.

Error to Circuit Court, Rockingham County.

S. S. Snarr was convicted of unlawful transportation of intoxicating liquor, and he brings error. Reversed and remanded, with directions.

E. D. Ott, of Harrisonburg, and *M. L. Walton*, of Woodstock, for plaintiff in error.

John R. Saunders, *Atty. Gen.*, *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *Leon M. Bazile*, *Second Asst. Atty. Gen.*, for the Commonwealth.

VIRGINIA HOT SPRINGS CO. v. SCHRECK.

Nov. 17, 1921.

[109 S. E. 595.]

1. Appeal and Error (§ 914 (1)*)—**Notice of Proceeding by Motion for Judgment Assumed Returned in Prescribed Time.**—Notice of proceeding by motion for judgment will be assumed to have been returned to the clerk's office within five days after service, as prescribed by Code 1919, § 6046; the date of service not appearing from the record, and no objection being made on this account.

2. Judgment (§ 184*)—**Notice of Proceeding by Motion for Judgment Must Be Returnable within 90 Days from Date.**—By analogy to Code 1919, § 6055, requiring "process from any court" to be returnable within 90 days after its date, the notice which section 6046 requires for commencing a proceeding by motion for judgment without

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fixing any appearance day therefor, and which therefore must be returnable within a reasonable time, will be held returnable within such 90 days, and, so being made returnable after such time, is, as a writ to commence the proceeding, a void process, giving the court no jurisdiction to hear and determine the controversy; and motion to quash the notice and dismiss the proceeding should be sustained.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 129.]

Error to Circuit Court, Bath County.

Proceeding by motion for judgment by one Schreck against the Virginia Hot Springs Company. Judgment for plaintiff, and defendant brings error. Reversed, with directions.

J. T. McAllister, of Hot Springs, and *Allen & Walsh*, of Charlottesville, for plaintiff in error.

John W. Stephenson & Son, of Warm Springs, *Geo. A. Rivercomb*, and *Timberlake & Nelson*, of Staunton, for defendant in error.

HITT v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 597.]

1. Indictment and Information (§ 191 (1*))—General Blanket Form Indictment Would Not Support Conviction for Drinking Whisky or of Receiving Ardent Spirits.—Defendant, being prosecuted for violation of the prohibition act under indictment in the general blanket form suggested in section 7 thereof, charging that defendant "did unlawfully manufacture, sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise and receive orders for ardent spirits," could not be convicted of drinking whisky, in violation of section 37, or of receiving ardent spirits, in violation of section 40.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 188.]

2. Intoxicating Liquors (§ 138*)—Whisky Bottle Carried in Coat Pocket or in Automobile Not Carried in "Baggage" within Prohibition Act.—A bottle of whisky carried in coat pocket or in automobile held not carried in baggage within prohibition act, permitting traveler to carry certain amount of liquor in his "baggage."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Baggage.]

3. Intoxicating Liquors (§ 131*)—Transportation of Liquor to Be Unlawful Need Not Be for Purpose of Sale.—Transportation of liquor, to be unlawful under Prohibition Act of 1918, §§ 3, 39, need not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.